

Message Text

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ACTION ARA-14

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E.O. 11652: N/A
TAGS: EINV, AR
SUBJECT: INVESTMENT DISPUTE: DELTEC

REF: 77 BUENOS AIRES 5862

1. ON FEBRUARY 16 SUPREME COURT REJECTED APPEAL BY DELTEC INTERNATIONAL AND DELTEC ARGENTINA AGAINST DECISION MADE BY PREVIOUS SUPREME COURT ON SEPTEMBER 4, 1973, EXTENDING THE SWIFT BANKRUPTCY TO OTHER COMPANIES OF THE DELTEC GROUP, INCLUDING THE TWO APPELLANT COMPANIES. SUPREME COURT USED RATIONALE THAT, BY NOT APPEALING EARLIER, THE APPELLANTS APPEARED TO HAVE ACCEPTED EARLIER JUDGMENT AND THAT APPEAL NOW WAS TOO LATE.

2. THE SUPREME COURT DECISION HAS SERIOUS CONSEQUENCES FOR DELTEC IN ARGENTINA. BY EXTENDING SWIFT'S BANKRUPTCY TO DELTEC INTERNATIONAL AND DELTEC ARGENTINA, ALL THE ASSETS OF THESE TWO COMPANIES MAY BE USED TO PAY SWIFT'S CREDITORS, INCLUDING THE SHARES OF DELTEC'S MAJOR SUBSIDIARY IN ARGENTINA, THE ESPERANZA SUGAR MILL (WORTH ABOUT \$47 MILLION). WHILE THE SALE OF SWIFT GENERATED PROCEEDS ALMOST COVERING SWIFT'S DEBT TO PRIVATE CREDITORS, IT DOES NOT COVER THE APPROXIMATE \$30 MILLION CLAIM
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ADVANCED BY THE GOA FOR FUNDS IT PROVIDED SWIFT WHILE IT WAS UNDER GOVERNMENT CONTROL. DELTEC HAS FILED A COUNTERSUIT AGAINST THE GOA FOR \$40 MILLION, CLAIMING THAT THIS IS THE AMOUNT LOST BY DELTEC BECAUSE IT WAS NOT PERMITTED TO SELL SWIFT IN 1973 AND BECAUSE GOVERNMENT MISMANAGEMENT LED SWIFT TO OPERATE AT A LOSS DURING THE PERIOD IT WAS UNDER GOA CONTROL. UNLESS THE COURTS

ACCEPT DELTEC'S COUNTERCLAIM, PRESUMABLY THE GOA WILL
BE ABLE TO OBTAIN THE \$30 MILLION IT LOST WHILE
OPERATING SWIFT FROM THE SALE OF ESPERANZA SHARES.

3. COMMENT: THE SUPREME COURT'S DECISION IS UNFORTUNATE.
DELTEC'S LAWYERS IN ARGENTINA POINT OUT THAT THE RATIONALE
FOR ITS DECISION IS DIFFICULT TO ACCEPT BECAUSE, THEY
MAINTAIN, AN APPEAL BACK IN 1973 WOULD HAVE BEEN AN ACT
OF FUTILITY. AT THAT TIME, DELTEC FACED A VERY HOSTILE
POLITICAL ENVIRONMENT AND EVERYONE KNEW THAT THE JUDGES
WERE DIRECTLY INFLUENCED BY THE EXECUTIVE BRANCH. NOW,
THE PROSPECTS ARE FOR A LONG, DRAWN OUT FIGHT IN THE
COURTS BETWEEN DELTEC AND THE GOA TO RESOLVE THEIR CLAIMS
AND COUNTERCLAIMS.
CASTRO

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